IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 481 OF 2003.

The State of Maharashtra .... Petitioner.

V/s

Dr.Vilas Mohanlal Shah (Gujar) & Ors.... ... Respondents.

Ms.G.P.Mulekar for the petitioner.

Mr.Amit B. Borkar for respondent Nos. 1 and 2.

CORAM: R.M.S. KHANDEPARKAR, J.

16-12-2004

PC:

Heard the learned advocates for the parties.

The petitioner challenges the order dated 5.5.2003 passed by the II Additional District Judge, Kolhapur in Regular Darkhast No.21 of 2001 on the ground that the respondents are not entitled to get the award modified in the Executing Court since the High Court in First Appeal No.105 of 1987 had allowed the modification relating to the component under section 23(1-A) of the Land Acquisition Act on the basis of decision in the case of ***K.S.Paripoornam v. State of Kerala & Ors.,*** (1994) 5 SCC 593 the Executing Court could not have made any changes therein to award any additional amount. The learned advocate for the respondent further drawing attention to the

decision of the Apex Court in the case of ***Sunder*** v. ***Union of India,*** 2001(4) Mh.L.J. 859 submits that no fault can be found with the impugned order as the Apex Court has clearly held that the solatium provided under section 23(2) forms integral part of compensation awarded and the person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium. Considering the law laid down by the Apex Court in *Sunder's* case therefore no fault can be found in the impugned order. The learned Government advocate has fairly conceded that the law stands modified in view of the decision of the Apex Court in *Sunder's* case which has been delivered subsequent to the case of *K.S.Paripoornam's* case. That being so there is no case for interference in the impugned order on the ground it is sought to be challenged by the petitioner.

2. However the petitioner is justified in contending that the Executing Court will have to consider whether any amount has already been paid by the petitioner to the respondent in the execution proceedings. In that regard attention has been drawn by the learned Government advocate to the averments by the Special Land Acquisition Officer in his additional affidavit wherein he has stated that :

> "12. I state that Respondents i.e. Original Applicant's have been paid 12% interest as an additional component amount on total market value of Rs.3,84,374/- which is determined by then Special Land Acquisition Officer (XI), Kolhapur, according to Amendment Land Acquisition Act, 1984 to Respondents. Accordingly, the then Special Land Acquisition Officer (XI), Kolhapur has paid Rs.1,23,476/- towards additional component u/s.23(1-A)

to Respondents on 31.3.198.

Hence this Additional amount of Rs.1,23,476/- which is already paid has to be deducted from the total payable additional component amount of Rs.2,08,849/-. The balance component amount to be paid to respondents comes to Rs.85,373/-."

3. The learned advocate for the respondents also has fairly submitted that in case the petitioner has already paid the amount certainly due credit will have to be given to the same and the said issue can be decided by the Executing Court itself before ordering disbursement of the actual amount by the petitioner.

4. In the circumstances therefore while rejecting the petition it is ordered that the Executing Court should ascertain whether there is any amount already paid to the respondent on account of acquisition proceedings in question and if so, to give credit for the same and accordingly order payment of amount due and payable to the respondent. Order accordingly. Petition stands disposed of.